

SUPREME COURT OF THE UNITED STATES

JULIUS ROSENBERG and ETHEL
ROSENBERG,

Petitioners,

vs.

CASE NO. _____

THE UNITED STATES OF AMERICA

I

The power and jurisdiction of Mr. Justice Douglas to make the order staying the electrocution of the Rosenbergs is conceded by the Solicitor General.

II

The Supreme Court has the power to affirm, modify, vacate, set aside or **reverse** an order only when it has been lawfully brought before it for review.

28 U.S.C.A. 2106

III

The Appellate jurisdiction in the Federal System of Procedure is purely statutory.

Heckler v. U.S. 217 U.S. 423, 30 S.Ct. 539

IV

The government must place the finger of the Court on a statute which specifically or by fair intendment names an order of a single justice as being subject to review by the Court.

This the government has not done and cannot do and hence the Court cannot look to 28 U.S.C.A. 2106 for the reason that this order has not and cannot be "lawfully brought before the Court for review."

V

The vague claims of the Attorney General in his brief

that the Court has jurisdiction is not supported by the only three cases he cites, i.e.,

- (1) Chatwood, 165 U.S. 443-dealt with certiorari to correct excesses of jurisdiction;
- (2) Ex parte U.S. 267 U.S. 241-dealt with the power of this Court to mandate a district court;
- (3) U. S. etc. v. U.S. 325 U.S. 196 dealt with the power of this Court to aid its exclusive appellate jurisdiction by a common law writ.

VI

That the Court does not have the power to touch the Douglas order is not as novel as the government asserts.

Over a century ago the Court said it could not exercise any power "in an Appellate form over decisions made at Chambers by a justice of this (Supreme) Court or a judge of the District Court." (In the matter of Metzger 46 U.S. 176; 5 How.).

The decision there made was a denial of habeas corpus.

VII

The cases cited by the Attorney General (Brief, P.6, did not deal with the question here raised by defendants. In those cases it was assumed that the power existed and the point was never examined.

Respectfully submitted,

FIKE FARMER and DANIEL G. MARSHALL

BY--

Daniel G. Marshall

Attorneys for Petitioner Edelman

File No.

SUPREME COURT. U. S.

SPECIAL TERM, June 18 & 19, 1953

~~Octobrxx Decemxx 1953~~

Term No.

Rosenberg, Julius et al.,

Petitioners,

vs.

United States

Memorandum submitted by Mr.

Daniel G. Marshall.

Filed June 19 1953.

June

UNITED STATES

vs.

ROSENBERG

MEMORANDUM SUBMITTED BY FYKE FARMER
ON THE QUESTION OF THE POWER OF THE
COURT TO VACATE JUSTICE DOUGLAS' STAY

The power of the Court to vacate the stay issued by a single Justice in pursuance to his statutory authority with respect to applications for the writ of habeas corpus is far from clear. Section 2241(b), Title 28 U.S.C. grants specific authority to any Justice either to grant the writ or to decline to entertain the application and "transfer the application for hearing and determination to the district court having jurisdiction to entertain it". This is in effect what Justice Douglas did.

The authority to stay the execution of the death sentence was necessarily implied from the unquestioned authority as a Justice of the Court to direct that the determination of the application be in the District Court. Otherwise his order would be rendered moot by the execution. The stay was essential to the preservation of jurisdiction.

Heretofore, it has been considered that the jurisdiction of the Supreme Court is either original or appellate. The power to vacate an order of a Justice deriving from his statutory grant of powers with respect to applications for the writ of

habeas corpus is not within the original powers vested in the Supreme Court by the Constitution. There appears to be no statute conferring upon the Court appellate or supervisory jurisdiction over one of the Justices in the case of his exercise of statutory jurisdiction and powers on applications for the writ of habeas corpus. Sections 2106 and 1651, Title 28 U.S.C. relied on by the Solicitor General are not applicable here.

There is no question of a failure of this Court to exercise the judicial powers. The question relates to the manner of the exercise. Its powers of review in this case will arise on application for certiorari after determination of the issues in the Courts below and in conformity with the Rules heretofore promulgated.

Respectfully submitted,

Fyke Farmer
Fyke Farmer

Receipt of a copy of the within memorandum acknowledged this 19th day of June, 1953,
10:13 A.M. Robert L. Stern

ROBERT L. STERN
ACTING SOLICITOR GENERAL

File No.

SUPREME COURT, U. S.

SPECIAL TERM, June 18 & 19, 1953

~~06XXXXXQXXXXX,XXXXXX~~

Term No. ---

Rosenberg, Julius et al.,

Petitioners,

vs.

United States

Memorandum submitted by Mr.

Fyke Farmer.

Filed June 19 1953

U. S. GOVERNMENT PRINTING OFFICE 16-17577-4

File No.

SUPREME COURT, U. S.

SPECIAL TERM June 18-19

~~October Term, 1953.~~

Term No.

Rosenberg, et al.,

Petitioners,

vs.

United States

Motion for stay of execution.

Filed

June 19, 1953.

Supreme Court of the
United States

RECEIVED

JUN 19 1953

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Julius Rosenberg and

Ethel Rosenberg,

Petitioners

United States of America,

The petitioners, Julius Rosenberg and Ethel Rosenberg, by Edmund H. Black, their attorney, move this Court for a stay of the execution of the petitioners, now scheduled for June 19, 1953 at 1 P.M. (within about 10 1/2 hours from the time of this Court's decision vacating the stay order of Mr. Justice Douglas that you granted, on June 17, 1953) pending the determination by the President of the United States upon appeal of the petitioners for a writ of certiorari challenging for the reasons set forth in the oral arguments before this Court this day.

Yours

June 19-1953

Respectfully submitted,

Edmund H. Black,
atty for petitioners

File No.

SUPREME COURT. U. S.

SPECIAL TERM June 18-19

October Term, 19 53

Term No.

Rosenberg, et al.,

Petitioners,

vs.

United States

Motion to reconsider.

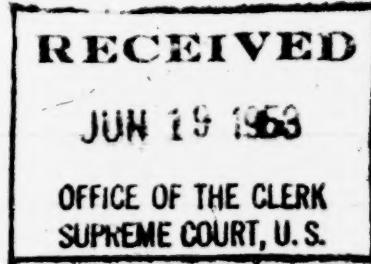
Filed June 19, 1953.

U. S. GOVERNMENT PRINTING OFFICE 16-17377

To U.S. Supreme Court

U.S.

Rosenberg



I hereby move thy court to
reconsider the question of its
powers to vacate Justice Douglas'
stay order and to hear oral
argument thereon immediately
and before the adjournment of
the special term of court.

6/19/53

Lyke Farmer

attorney for
David S. Nelson

David G. Marshall